IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 3850 of 1996

Between:

1. V.S. Prakash Rao Senior Assistant (Commercial)

S/o Lakshminarayana Murty, aged 49 years, T.M./Dept.

Emp.No. 141112, Visakhapatnam Port Trust,

Visakhapatnam.

2. Port & Dock Employees Association (Reg.D-3/70)

D.No.14-25-32, Dandu Bazar, Maharanipet,

Visakhapatnam, rep. by its General Secretary,

A. Rehman.

..... PETITIONERS

AND

1. The Chairman, Visakhapatnam Port Trust,

Visakhapatnam.

2. Traffic Manager, Traffic Department, Visakhapatnam Port Trust,

Visakhapatnam.

3. Chief Medical Officer, Medical Department

Visakhapatnam Port Trust,

Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus or any other appropriate writ declaring the proceedings dated 31.12.1993 in canceling the period 28.7.1992 to 11.1.1993 as injured on duty leave and treating the same as sick leave as confirmed in further orders dated 8.6.94 as illegal, arbitrary and unjust and consequently direct the respondents to treat the period from 28.7.92 to 11.1.93 as injured on duty leave.

For the Petitioner: Mr. G. Vidyasagar, Advocate

For the Respondents: Mr. V.V.N. Narasimharm, Advocate

The Court Made the Following :

::ORAL ORDER::

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The petitioner while working as Senior Assistant (Commercial) in the Port Trust, Visakhapatnam, in its Traffic Department was waiting at the RTC Bus Complex, Dwarakanagar to board a bus to attend to the shift duty during 6 am to 2 pm, on 28.7.1992. While boarding the bus he fell down sustained injury and became unconscious. He was taken to Port Hospital, admitted and was treated as an in-patient during 28.7.92 and 29.7.92. While admitting him the concerned Traffic officials labelled him as having been injured on duty. This description was also followed by the hospital authorities who registered him as such. His medical certificate also described him as having been injured on duty and he was paid salary on the said basis. Later by memo dated 31.12.1993 the period of his absence was converted to one under sick leave instead of as 'injured on duty' on the ground that as he had sustained injury at the RTC complex and not while actively on duty in the Port Trust Premises, he was not entitled to be treated as having been injured on duty. Representations followed unsuccessfully. Eventually he is before this court seeking in substance a declaration that he should be treated as having been injured

on duty.

The issue is no longer *res integra*. I n *Regional Director, ESI Corporation and another vs Francis De Costa and another ()* in a fact situation arising under the Employees Insurance Act 1948, the Supreme Court declared that an injury caused while the employee was going to the place of employment on his own bicycle does not amount to an injury caused out of and during the course of employment and such employee was not entitled to be considered as having been injured during the course of employment. The same principle is applicable to the fact situation on hand. The petitioner was awaiting the bus to go to his place of employment and while boarding the bus fell down and sustained injury and as such he could not be considered as having injured during the course of employment.

On the above analysis the writ petition is misconceived, bereft of merit and is accordingly dismissed. No costs.

Date: 18.11.2004 ----------

Pvsn Justice G.Raghuram

To

1. The Chairman, Visakhapatnam Port Trust,

Visakhapatnam.

2. Traffic Manager, Traffic Department, Visakhapatnam Port Trust,

Visakhapatnam.

3. Chief Medical Officer, Medical Department

Visakhapatnam Port Trust,

Visakhapatnam.

4. 2 CD copies.